

**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD**

IN RE: ENCARTELE, INC.

DOCKET NO. TF-2019-0270

**PRISON POLICY INITIATIVE’S SUPPLEMENTAL COMMENTS
REGARDING ENCARTELE’S PROPOSED TARIFF (REVISED)**

Pursuant to the Board’s order of September 25, 2020, Encartele, Inc. filed a revised proposed tariff in the above-captioned proceeding on October 9, 2020 (the “Revised Tariff”). The Prison Policy Initiative, Inc. (“PPI”), having recently discovered additional relevant information concerning Encartele’s practice, submits these supplemental comments for the Board’s consideration.

Section 4.3.2 of the Revised Tariff states that customers making an “electronic” payment for prepaid calls will be assessed a fee of \$3. PPI has discovered evidence that Encartele still charges payment processing fees in excess of the tarified amount. Specifically, as detailed in the Declaration of Andrea L. Fenster (attached hereto), Encartele charges \$2.99 plus a processing fee of 5% of the amount of the purchase. *See* Fenster Decl. ¶ 4. Thus, a customer who makes a prepayment for 100 minutes of voice calling must pay total transaction fees of \$4.08. *Id.* ¶ 7.

As PPI explained in regards to Global Tel*Link’s similar payment-fee structure, this type of layered payment fees likely violates federal law.¹ Moreover, Encartele’s practice is clearly in conflict with the terms of its Revised Tariff.

Because Encartele appears to be imposing fees that the Board has not authorized, PPI encourages the Board to not approve the Revised Tariff until Encartele demonstrates that it has modified its operations to comply with its obligations under the tariff. We also believe that the Board should enter an order requiring Encartele to refund any payment fees it has collected in excess of the amount listed in its tariff.

¹ *In re Global Tel*Link*, Dkt. No. TF-2019-0039, [PPI’s Reply to GTL](#), at 1-3 (Oct. 29, 2020)

PPI respectfully requests that the Board give consideration to the comments filed herein before ruling on the Revised Tariff.

Dated: November 13, 2020

Respectfully submitted,

PRISON POLICY INITIATIVE, INC.

/s/ Peter Wagner

By Peter Wagner, Executive Director
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**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD**

IN RE: ENCARTELE, INC.

DOCKET NO. TF-2019-0039

DECLARATION OF ANDREA L. FENSTER

I, Andrea L. Fenster, declare as follows:

1. I am employed as a policy analyst at the Prison Policy Initiative. I am over the age of eighteen, and I make the following declaration based on my own personal knowledge. If called upon to testify concerning the matters expressed herein, I could and would competently do so under oath.

2. On November 13, 2020, I accessed the website <https://cidnet.net/friends-and-family-portal/>, operated by Encartele, Inc., for the purpose of initiating a prepayment for inmate calling service.

3. In order to make a prepayment, Encartele requires customers to create an account at the domain <https://customer.cidnet.net>. As part of the account creation process, customers are required to agree to Encartele's "Terms of Use." A true and accurate copy of the Terms of Use is attached hereto as **Exhibit 1**.

4. According to the Terms of Use, Encartele charges a "convenience fee" of \$2.99 for deposits, in addition to a "credit card processing fee" equal to 5% of the total deposit amount. Exh. 1 at 2-3.

5. I initiated a deposit via Encartele's website, and found that the fee calculation is consistent with the Terms of Use, as noted above.

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6. For voice calling, Encartele requires customers to convert the amount of calling time into “data.” As illustrated in the following screenshot, to prepay for 100 minutes of voice calling service, a customer must purchase 63 megabytes of data:

Purchase Data

① Amount ② Payment ③ Terms ④ Confirm

Our services are based on the amount of data transmitted. A standard voice call transmits approximately 0.66 MB for every minute. Enter the MB of data you wish to purchase, then click Next.

Data Calculator

Voice Minutes: 100

63 MB
\$18.90

All data can be used for all of our services. The calculator above is to help determine how much data you want to purchase, it does not limit you to only using the data for a particular service.

Megabytes to Purchase: 63 MB

Next >

7. A purchase of data equivalent to 100 minutes of calling costs \$18.90. To make a prepayment of this amount, Encartele’s website quoted me a convenience fee of \$2.99 plus a credit card processing fee of \$1.09. The \$1.09 appears to be 5% of the principal amount plus the convenience fee (i.e., $(18.90 + 2.99) \times .05 = 1.09$). The details of the applicable fees are displayed in the following screenshot:

Purchase Data

① Amount ② Payment ③ Terms ④ Confirm

Review the details of your purchase, then click Submit to process your transaction.

| | |
|-------------------------------|---------|
| Current Data Balance: | 0 MB |
| Purchased Data: | 63 MB |
| After Purchase: | 63 MB |
| Total: | \$18.90 |
| * Convenience Fee: | \$2.99 |
| * Credit Card Processing Fee: | \$1.09 |
| Transaction Amount: | \$22.98 |

Billing Details:

amex ***** Redacted

Andrea Fenster

Redacted

Easthampton, MA Redacted

* Fees are non-refundable.

< Previous Submit

I have redacted the payment-card digits and billing associated with the transaction, but in all other respects the preceding screenshot is a true and accurate record of the information displayed by Encartele's website.

I certify under penalty of perjury and pursuant to Iowa Code § 622.1 that the preceding is true and correct.

/s/ Andrea L. Fenster
Andrea L. Fenster

11/13/2020
Date

Terms of Use

Scroll Down to Agree

Please read these Terms of Service carefully. Your access to services and data will be authorized upon your acceptance of and compliance with these terms. These Terms shall also apply equally to any party using the account for which you will be responsible.

THIS IS AN AGREEMENT BETWEEN YOU AND ENCARTELE INC.

Acceptance of the Terms

You must be of legal age to enter into this binding agreement and accept its Terms. If you do not agree to the General Terms, you may not use any of our Services. If you agree to the General Terms and do not agree to any Service Specific Terms, you may not use the corresponding Service.

Definitions

Data: bandwidth that can be transmitted for the use of Encartele services available for your use.

Services: applications in which data can be transmitted to communicate with your family or friend confined in a correctional institute.

Description of Service

We provide an array of services for online communication with your friends or family members who are incarcerated in a jail that is contracted to provide Encartele. With Encartele you must purchase data to use the services available. When data is purchased it becomes your data that can be used in any way you choose as it relates to the available services. Abusing any service available on your account can lead to account termination at any time at our discretion.

Modification of Terms of Service

We may modify the Terms upon notice to you at any time through a service announcement or by sending email to your primary email address. Your continued use of the Service after the effective date of any change to the Terms will be deemed to be your agreement to the modified Terms.

Communications from Encartele Inc.

The Service may include certain communications from Encartele Inc., such as service announcements, receipts, or account updates. You understand that these communications shall be

considered part of the available Services. You will not be able to opt-out from receiving service announcements.

Fees and Payments

You acknowledge that the Payment Method and other information you provide is true, accurate, current, and complete, and promise to maintain and promptly update that information to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Encartele Inc. has reason to suspect that such information is untrue, inaccurate, not current or incomplete, that you have otherwise acted in a fraudulent manner, or that your account is otherwise subject to fraud or misrepresentation, Encartele Inc. has the right to terminate your account and refuse all current or future access to or use of your account and data. You also authorize Encartele Inc. to update your Payment Method information with data Encartele Inc. may obtain from the issuer of your Payment Method.

When you supply Encartele Inc. with a Payment Method, you authorize Encartele Inc. to bill that Payment Method for all charges and fees incurred relating to the selected Data. The terms of your Payment Method are determined by an agreement(s) between you and your financial institution. If Encartele Inc. is unable to receive payment from your Payment Method successfully, or if Encartele Inc. does not otherwise receive timely payment, you will pay all amounts then owing to Encartele Inc. upon demand and, in addition to other rights, Encartele Inc. may suspend or terminate the Services and the associated terms, and all the information contained within your account may be deleted permanently. Encartele Inc. accepts no liability for information that is deleted due to an invalid Payment Method.

Encartele Inc. is PCI compliant, and to protect against potential fraud, Encartele Inc. may take steps to verify the validity of the credit card information you provide. The verification process may include asking you to verify the amount debited to confirm that you are in possession of your credit card, AVS checks, and tokenization. Encartele Inc. will only use this process to screen for fraud.

Your Payment Method will automatically be charged the fees for the Data that you choose. All payments will be made in US dollars. When your payment is processed you will immediately receive a receipt to your email for your records. This receipt can also be found under your account history. Each payment will be identified as CIDNET 402-378-9020 on your credit card statement for you to reference.

The types of Payment Methods that we accept and the timing for billing of any fees may vary, and Encartele Inc. may, upon notice required by applicable laws, at any time change: (a) the amount of or basis for determining any fee or charge, (b) institute new fees or charges with respect to the Data and Services, (c) Payment Methods that we accept, or (d) the timing for billing of any fees.

Calculation of Fees

A convenience fee of \$2.99 will be charged at the time data is purchased. There will also be a credit card processing fee 5% of your total purchase.

Sale of Unused Data

For data that is purchased and not used, Encartele allows you to sell back your data at the price then in effect. If you agree to sell back your unused data at the price then in effect, funds will be paid via check sent to you in the mail.

Restrictions on Use

In addition to all other terms and conditions of this Agreement, you shall not: transfer the Services or otherwise make it available to any third party; post links to third party sites or use the Cidnet logo, company name, etc. without their prior written permission; violate any applicable local, state, national or international law; and create a false identity to mislead any person as to the identity or origin of any communication.

Trademark

Cidnet, Cidnet logo, the names of individual Services and their logos are trademarks of Encartele Inc. You agree not to display or use, in any manner, the Encartele Inc. trademarks, without Encartele's prior permission.

Disclaimer of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE USE OF THE SERVICES IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN AS-IS-AND-AS-AVAILABLE BASIS. Encartele Inc. EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, Encartele Inc. MAKES NO WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, OR ERROR FREE. NO ADVICE OR INFORMATION, WHETHER WRITTEN OR ORAL, OBTAINED BY YOU FROM Encartele Inc., ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

Limitation of Liability

YOU AGREE THAT Encartele Inc. SHALL, IN NO EVENT, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER LOSS CAUSED BY YOUR USE OF OR INABILITY TO USE THE SERVICE.